

93049410

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS made this 9th day of July, 1993, by LA QUINTA INNS, INC., a Texas corporation (hereinafter called "Assignor"), to THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation (hereinafter called "Assignee");

W I T N E S S E T H:

Assignor, in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid and other good and valuable consideration paid by Assignee, the receipt and sufficiency of which are hereby acknowledged, does hereby absolutely and unconditionally GRANT, CONVEY, ASSIGN, TRANSFER and SET OVER unto Assignee the following:

A. all rights, title, interests, estates, powers, privileges, options and other benefits of Assignor in, to and under the lease agreements which now or hereafter cover or affect all or any portion of the land described in Exhibit A attached hereto and made a part hereof and the improvements located thereon (said land and improvements hereinafter called the "Subject Property"), together with all renewals, extensions, modifications, amendments, subleases and assignments of such lease agreements (such lease agreements, renewals, extensions, modifications, amendments, subleases and assignments herein called the "Leases"); and

B. all of the rents, income, receipts, revenues, issues, profits and other sums of money (hereinafter collectively called the "Rent") that are now and/or at any time hereafter become due and payable to Assignor under the terms of the Leases or arising or issuing from or out of the Leases or from or out of the Subject Property or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default, security deposits, advance rents, all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by destruction or damage to the Subject Property and all of Assignor's rights to recover monetary amounts from any lessee in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, under the Federal Bankruptcy Code, including specifically the immediate and continuing right to collect and receive each and all of the foregoing; and

C. any and all guaranties of payment of the Rent.

This Assignment of Leases and Rents is made by Assignor to provide a source of future payment of the following notes, obligations, indebtedness and liabilities: (a) one certain promissory note of even date herewith in the principal amount of Twenty Eight Million, Six Hundred Twenty Thousand Dollars (\$28,620,000), one certain promissory note of even date herewith in the principal amount of Fourteen Million, Three Hundred Forty Thousand Dollars (\$14,340,000), and one certain promissory note of even date herewith in the principal amount of Two Million, Ninety Thousand Dollars (\$2,090,000), each made by Assignor and payable to the order of Assignee, with interest at the rate or rates therein provided, both principal and interest being payable as therein provided, and all amounts remaining unpaid thereon being finally due and payable on July 9, 2000, and each containing a provision for the payment of a reasonable additional amount as attorney's fees, and all other notes given in

For mtg see doc. # 93049409

STATE OF ILL. Chicago Title Insurance Company

STATE OF ILL. REC'D

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substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part, such notes and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part, being hereinafter collectively called the "Note"; (b) all indebtedness now or hereafter incurred or arising pursuant to the provisions of, or secured by, the Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement of even date herewith (hereinafter called the "Mortgage") made by Assignor to secure the payment of the Note and covering the Subject Property and certain other property described therein; and (c) all indebtedness incurred or arising pursuant to the provisions of this Assignment or any loan agreement relating to the above described indebtedness or any other instrument now or hereafter evidencing, governing or securing the above described indebtedness or any part thereof; SUBJECT, HOWEVER, to the terms, provisions and conditions herein set forth.

1. Assignor hereby represents and warrants unto Assignee that Assignor is the sole owner of the entire lessor's interest in the Leases and has good title and good right to assign the Leases and Rent hereby assigned and no other person or entity has any right, title or interest therein; that Assignor has duly and punctually performed all of the terms, covenants, conditions and warranties of the Leases that were to be kept, observed and performed by it; that Assignor has not, at any time prior to the date hereof exercised any right to subordinate any Lease to any deed of trust or mortgage or any other encumbrance of any kind; that Assignor has not executed any prior assignments of the Leases or the Rent thereunder; that no Rent reserved in any Lease has been anticipated and no Rent for any period subsequent to the date of this assignment has been collected in advance of the time when the same became due under the terms of the applicable Lease; that Assignor has performed no act or executed any other instrument which might prevent Assignee from enjoying and exercising any of its rights and privileges evidenced hereby; that each of the Leases is valid and subsisting and in full force and effect and unmodified; that there exists no defense, counterclaim or set-off to the payment of the Rent under the Leases; and that there are no defaults now existing under the Leases and no event has occurred which with the passage of time or the giving of notice, or both, would constitute such a default.

2. Assignor agrees that, so long as the indebtedness evidenced by the Note or any part thereof or any other indebtedness secured by the Mortgage shall remain unpaid, Assignor will make no assignment, pledge or disposition of the Leases or the Rent thereunder; nor will Assignor subordinate any of the Leases to any deed of trust or mortgage or any other encumbrance of any kind or permit, consent or agree to such subordination; nor will Assignor reduce the Rent payable under any of the Leases, modify, alter or amend the Leases or waive, excuse, condone, discount, set off, compromise or in any manner release or discharge any lessee under any Lease of and from any obligations, covenants, conditions and agreements to be kept, observed and performed by the lessee, including the obligation to pay the Rent thereunder in the manner and at the place and time specified therein; nor will Assignor incur any indebtedness to a lessee under or guarantor of any Lease which may under any circumstance be used as an offset against the Rent or other payments due under said Lease; nor will Assignor exercise any option required or permitted by the terms of any of the Leases without the prior written consent of Assignee; nor will Assignor receive or collect any Rent from any present or future lessee of the Subject Property or any part thereof for a period of more than one month in advance of the date on which such payment is due; nor will Assignor cancel or terminate any of the Leases, accept a surrender thereof, commence an action of ejectment or any summary proceedings for dispossession of a lessee under any of the Leases, or convey or transfer or suffer or permit a conveyance or transfer of the premises demised thereby or of any

interest therein so as to effect directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of any lessee thereunder; nor will Assignor consent to an assignment or sublease of the interest and estate of any lessee under any of the Leases, whether or not in accordance with its terms; nor will Assignor modify or change the terms of any guaranty of any of the Leases or cancel or terminate such guaranty; nor will Assignor enter into additional leases covering any portion of the Subject Property, or renew or extend the term of any Lease unless an option therefor was originally reserved by the lessee in the Lease for a fixed and definite rental, or relocate or expand the floor space of any lessee under a Lease within the Subject Property, without first having obtained the written consent of Assignee; and any such acts, if done or permitted to be done without the prior written consent of Assignee, shall be null and void.

3. Assignor covenants with Assignee, for so long as the indebtedness evidenced by the Note or any part thereof or any other indebtedness secured by the Mortgage shall remain unpaid, to observe and perform duly and punctually all the obligations imposed upon any lessor under the Leases and not to do or permit to be done anything to impair the value thereof; to enforce the performance of each and every term, provision, covenant, agreement and condition in the Leases to be performed by any lessee thereunder; to appear and defend any action or proceeding arising under, occurring out of or in any manner connected with any of the Leases, or the obligations, liabilities or duties of Assignor or any lessee under the Leases and, upon request by Assignee, to make appearance in the name and on behalf of Assignee, but at the expense of Assignor, to exercise any option or election contained in or relating to any of the Leases which Assignee shall require; at Assignee's request to assign and transfer to Assignee by specific Assignment of Leases and Rents, in the form of this Assignment of Leases and Rents, any and all subsequent Leases upon all or any part of the Subject Property (it being understood and agreed that no such specific assignment shall be required for such subsequent Leases to be covered by and included within this Assignment of Leases and Rents as provided herein); to deliver to Assignee executed copies of any and all Leases, renewals and extensions of existing Leases and any and all subsequent Leases upon all or any part of the Subject Property; and to execute and deliver at the request of Assignee all such further assurances and assignments in the premises covered by the Leases as Assignee shall from time to time require and to deliver other records and instruments, including but not limited to rent rolls and books of account, that Assignee shall from time to time require.

4. Until receipt from Assignee of notice of the occurrence of a default specified in the Mortgage (hereinafter called a "Notice of Default"), each lessee under the Leases may pay Rent directly to Assignor and Assignor shall have the right to receive such Rent provided that Assignor shall hold such Rent as a trust fund to be applied as required by Assignee and Assignor hereby covenants so to apply the Rent, before using any part of the same for any other purposes, first, to the payment of taxes and assessments upon the Subject Property before penalty or interest is due thereon; second, to the cost of insurance, maintenance and repairs required by the terms of the Mortgage; third, to the satisfaction of all obligations specifically set forth in the Leases; fourth, to the payment of interest and principal becoming due on the Note and the Mortgage; and, fifth, provided no default has occurred under the Mortgage, to Assignor. Upon receipt from Assignee of a Notice of Default, each lessee under the Leases is hereby authorized and directed to pay directly to Assignee all Rent thereafter accruing and the receipt of Rent by Assignee shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee under the Leases of a Notice of Default shall be sufficient authorization for such lessee to make all future payments of Rent directly to Assignee and each such

lessee shall be entitled to rely on such Notice of Default and shall have no liability to Assignor for any Rent paid to Assignee after receipt of such Notice of Default. Rent so received by Assignee for any period prior to foreclosure under the Mortgage or acceptance of a deed in lieu of such foreclosure shall be applied by Assignee to the payment (in such order as Assignee shall determine) of: (a) all expenses of managing the Subject Property, including but not limited to the salaries, fees and wages of a managing agent and such other employees as Assignee may deem necessary or desirable; all expenses of operating and maintaining the Subject Property, including but not limited to all taxes, assessments, charges, claims, utility costs and premiums for insurance, and the cost of all alterations, renovations, repairs or replacements; and all expenses incident to taking and retaining possession of the Subject Property and/or collecting the Rent due and payable under the Leases; and (b) the Note and other indebtedness secured by the Mortgage, principal, interest, attorneys' and collection fees and other amounts, in such order as Assignee in its sole discretion may determine. In no event will this Assignment of Leases and Rents reduce the indebtedness evidenced by the Note or otherwise secured by the Mortgage, except to the extent, if any, that Rent is actually received by Assignee and applied upon or after said receipt to such indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Assignee may, at its option, at any time and from time to time, release to Assignor Rent so received by Assignee or any part thereof. As between Assignor and Assignee, and any person claiming through or under Assignor, other than any lessee under the Leases who has not received a Notice of Default pursuant to this Paragraph, this Assignment of Leases and Rents is intended to be absolute, unconditional and presently effective and the provisions of this Paragraph for notification of lessees under the Leases upon the occurrence of a default specified in the Mortgage are intended solely for the benefit of each such lessee and shall never inure to the benefit of Assignor or any person claiming through or under Assignor, other than a lessee who has not received such notice. It shall never be necessary for Assignee to institute legal proceedings of any kind whatsoever to enforce the provisions of this Paragraph.

5. At any time during which Assignor is receiving Rent directly from lessees under the Leases, Assignor shall, upon receipt of written direction from Assignee, make demand and/or sue for all Rent due and payable under one or more Leases, as directed by Assignee, as it becomes due and payable, including Rent which is past due and unpaid. In the event Assignor fails to take such action, or at any time during which Assignor is not receiving Rent directly from lessees under the Leases, Assignee shall have the right (but shall be under no duty) to demand, collect and sue for, in its own name or in the name of Assignor, all Rent due and payable under the Leases, as it becomes due and payable, including Rent which is past due and unpaid.

6. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Subject Property, or any part thereof, or from any other act or omission of Assignee under or relating to the Leases unless such loss is caused by the gross negligence or willful misconduct of Assignee, nor shall Assignee be obligated to perform or discharge any obligation, duty or liability under the Leases by reason of this instrument or the exercise of rights or remedies hereunder. Assignee shall not be liable for its failure to collect, or its failure to exercise diligence in the collection of, Rent under the Leases, but shall be accountable only for Rent that Assignee actually receives. Assignor will indemnify and hold harmless Assignee (for purposes of this paragraph, the term "Assignee" shall include the directors, officers, partners, employees and agents of Assignee and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Assignee) from and against, and reimburse Assignee for, all claims, demands, liabilities, losses, damages,

causes of action, judgments, penalties, costs and expenses (including, without limitation, reasonable attorney's fees) incurred under the Leases by reason of this instrument or the exercise of rights or remedies hereunder, or which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, including specifically any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any lessee under any Lease and not assigned and delivered to Assignee. **THE INDEMNITIES CONTAINED IN THIS PARAGRAPH SHALL INCLUDE CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES) RESULTING FROM THE NEGLIGENCE OF ASSIGNEE, BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ASSIGNEE.** The foregoing indemnities shall not terminate upon release or other termination of this Assignment of Leases and Rents. Any amount to be paid under this Paragraph by Assignor to Assignee shall be a demand obligation owing by Assignor to Assignee, shall bear interest from the date such amount becomes due until paid at the rate of interest payable on matured but unpaid principal of or interest on the Note and shall be secured by the Mortgage and by any other instrument securing the Note. This Assignment of Leases and Rents shall not operate to place responsibility upon Assignee for the control, care, management or repair of the Subject Property, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Assignee responsible or liable for any waste committed on the Subject Property by the tenants or by any other parties or for any dangerous or defective condition of the Subject Property, or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

7. This Assignment of Leases and Rents is primary in nature to the obligation evidenced and secured by the Note, the Mortgage and any other document given to secure and collateralize the indebtedness secured by the Mortgage. Assignor agrees that Assignee may enforce this Assignment of Leases and Rents without first resorting to or exhausting any security or collateral securing the payment of the Note; provided however, that nothing herein contained shall prevent Assignee from suing on the Note, foreclosing the Mortgage or exercising any other right under any document securing the payment of the Note or at law or equity.

8. In the event any lessee under the Leases should be the subject of any proceeding under the Federal Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of any of the Leases assigned hereby, Assignor covenants and agrees that if any Lease is so rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for rejection of any such Lease will be made payable to both Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which will be applied to the Note and other indebtedness secured by the Mortgage, principal, interest, attorneys' and collection fees and other amounts, in such order as Assignee in its sole discretion may determine.

9. Nothing contained herein and no act done or omitted by Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note and the Mortgage or a waiver or curing of any default hereunder or under the Note or the Mortgage, and this Assignment of Leases and Rents is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms of the Note and the Mortgage. The right of Assignee to collect said principal sum, interest and indebtedness

and to enforce any security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

10. If the Note and all other indebtedness secured by the Mortgage are paid as the same becomes due and payable and if all of the covenants, warranties, undertakings and agreements made in the Mortgage and in this Assignment of Leases and Rents are kept and performed, this Assignment of Leases and Rents shall become null and void and of no further force and effect but no lessee under the Leases shall be required to take notice of such termination until a copy of a release of the Mortgage and this Assignment of Leases and Rents shall have been delivered to such lessee.

11. Assignee may take or release any security for the payment of the Note and other indebtedness secured by the Mortgage, may release any party primarily or secondarily liable therefor and may apply any security held by it to the satisfaction of the Note and such other indebtedness without prejudice to any of its rights under this Assignment of Leases and Rents.

12. Assignee may at any time and from time to time in writing (a) waive compliance by Assignor with any covenant herein made by Assignor to the extent and in the manner specified in such writing; (b) consent to Assignor doing any act which hereunder Assignor is prohibited from doing, or consent to Assignor failing to do any act which hereunder Assignor is required to do, to the extent and in the manner specified in such writing; or (c) release any part of the Subject Property and/or the Leases, or any interest therein, from this Assignment of Leases and Rents. No such act shall in any way impair the rights of Assignee hereunder except to the extent specifically agreed to by Assignee in such writing.

13. The rights and remedies of Assignee hereunder shall not be impaired by any indulgence, including but not limited to (a) any renewal, extension or modification which Assignee may grant with respect to any indebtedness secured by the Mortgage, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Assignee may grant in respect of the Subject Property and/or the Leases or any part thereof or any interest therein, or (c) any release or indulgence granted to any endorser, guarantor or surety of any indebtedness secured hereby.

14. A determination that any provision of this Assignment of Leases and Rents is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Assignment of Leases and Rents to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

15. Notwithstanding (a) the fact that any Lease or the leasehold estate created thereby may be held, directly or indirectly, by or for the account of any person or entity which shall have an interest in the fee estate of the Subject Property, (b) the operation of law or (c) any other event, lessee's leasehold estate under such Lease shall not merge into the fee estate and the lessee shall remain obligated under such lease as assigned by this Assignment of Leases and Rents.

16. This Assignment and the terms, provisions, representations and warranties herein contained shall be binding upon Assignor and Assignor's successors and assigns, and all subsequent owners of the Subject Property and shall inure to the benefit of Assignee and Assignee's successors and assigns, including all subsequent holders of the Note and the Mortgage. All references in this Assignment of Leases and Rents to Assignor

or Assignee shall be deemed to include all such successors and assigns of such respective party.

17. Within this Assignment of Leases and Rents, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural and words in the plural number shall be held and construed to include the singular, unless the context otherwise requires.

18. This Assignment of Leases and Rents may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

19. It is expressly agreed by the parties hereto that this Assignment of Leases and Rents shall not be construed or deemed made for the benefit of any third party or parties.

20. This Assignment of Leases and Rents contains the entire agreement concerning the assignment of the Leases and the Rent thereunder between the parties hereto. No variations, modifications or changes herein or hereof shall be binding upon any party hereto, unless set forth in a document duly executed by or on behalf of such party.

21. The liability of Assignor for the payment of the Note, and for the performance and observance of the covenants, representations and warranties of Assignor contained in the Note and in this Assignment is limited in the manner, and subject to the exceptions to such limitation, described in the Note, reference to which is hereby made for all purposes.

22. This Assignment and the rights and duties of the parties hereunder shall be governed for all purposes by the law of the State of Indiana and the law of the United States applicable to transactions within such State.

IN WITNESS WHEREOF, Assignor has executed this Assignment of Leases and Rents as of the date first above written.



By: _____

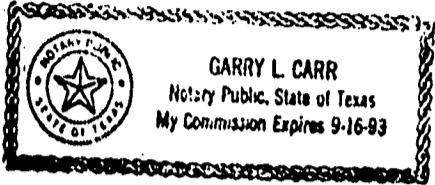
Name: Michael A. Depatie
Title: Senior Vice President - Finance

THE STATE OF TEXAS

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COUNTY OF DALLAS

Before me, a Notary Public in and for the County and State, personally appeared Michael A. Depatie, by me known and by me known to be the Senior Vice President - Finance of La Quinta Inns, Inc., a Texas corporation, who acknowledged the execution of the foregoing, "Assignment of Leases and Rents" on behalf of said corporation.



Notary Public, State of Texas

(printed name)

My commission expires:



PREPARED BY AND WHEN RECORDED RETURN TO:

Martha Harris
Thompson & Knight, P.C.
3300 First City Center
1700 Pacific Avenue
Dallas, Texas 75201

RETURN TO:

Garry L. Carr
Charter Title Company
Regions Bank Center
700 Louisiana
Suite 3340
Houston, Texas 77002
GF # _____

EXHIBIT A

Property Address:

La Quinta Inn #805
8210 Louisiana Street
Merrillville, IN 46410-6354

Legal Description:

TRACT I-FEE

Part of the East Half of the Southeast Quarter of Section 22, Township 35 North, Range 8 West of the 2nd P.M. lying South of the Southerly line of the I-65 Exit Ramp, Lake County, Indiana, described as beginning at a point on said Southerly line and 1029.00 feet West of the East line of said Section 22 (measured perpendicular); thence South and parallel with said East line, 395.88 feet; thence South 63 degrees 58 minutes 17 seconds East 87.78 feet; thence Southerly along a circular curve which is convex to the West whose radius = 180.00 feet, tangent = 41.57 feet, deflection angle = 26 degrees 00 minutes 20 seconds, a distance of 81.69 feet along said curve; thence South 00 degrees 01 minute 23 seconds West, 12.33 feet; thence North 89 degrees 58 minutes 37 seconds West, 350.00 feet to a point lying 15.00 feet East of the West line of said East Half (measured perpendicular); thence North 00 degrees 01 minute 23 seconds East and parallel with said West line, 409.95 feet to said Southerly line; thence Easterly along said Southerly line along a circular curve which is convex to the North whose radius = 722.27 feet, tangent = 159.49 feet, deflection angle = 27 degrees 54 minutes 14 seconds, a distance of 313.94 feet along said curve to the point of beginning, being a part of Parcel 1, Westlake Plaza, as shown in Plat Book 47, Page 77, in Lake County, Indiana, and as amended in Certificates of Correction recorded August 10, 1977, as Document Nos. 422236 and 422237, and in Certificate of Correction recorded August 29, 1977, as Document No. 425494.

TRACT II-EASEMENT

Easement estate appurtenant to Tract I created by Common-Access and Cross-Parking Easement Agreement dated June 7, 1990, and recorded June 29, 1990, as Document No. 109458, made by and between L. Q. Joint Venture #800, a Texas Joint Venture, composed of La Quinta Motors Inns, Inc., a Texas corporation, and The Prudential Insurance Company of America, a New Jersey corporation, and The Great Western, Inc., an Indiana corporation.